IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO: 14760 of 2004

Between:

1 Malireddy Veerabhadra Rao S/o. Venkata Raju
R/o. Mallam Vill, Pithapuram Mandal, E.G.District.
2 Gothula Shyamala W/o. Late Chandra Rao
R/o. Indrapulam, Kakinada (Rural) E.G.District.
3 Guthula Veera Vishnu Venkata Ramanu S/o. Late Chandra Rao
R/o. Z.P. High School Road, D.No. 8-131 Indrapalem

Kakinada,(Rural) E.G.District.
4 Vittanala Lavakuntam W/o. Sinhachalam,
Venkatapuramvillage, Near Ponduri Cherulku, Kakinada Mandal,
E.G.District.

... PETITIONERS

AND

1 The Executive Officer, Sri MSN Charities, rep. by its Executive

Officer, Kakinada, E.G.District.
2 The Asst. Commissioner of Endowments, Prakashnagr, Danavaipet,

Rajahmundry, E.G.Dist.
3 Station House Officer, Pithapuram P.S., E.G.District.
4 Karakula Gangadhar Rao S/o. Surya Rao
R/o. Virawada Village, Pithapuram Mandal, E.G.Dist.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a

writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the 2nd respondent in not passing the appropriate order within the stipulated period in pursuance of the order in W.P.No.14237/2003 dt. 28.8.2003 with regard to petitioners lands as illegal and arbitrary and consequently direct the 2nd respondent to pass appropriate orders forthwith in respect of the lands in RS.NO.205/1 to the extent of
Ac-3-28 cents wet in RS.No.210 to the extent tof Ac-6-06 cents wet in Virawada village, Pithapuram mandal, E.G.District.

Counsel for the Petitioners: MR.Y.VIVEKANANDA SWAMY

Counsel for Respondent No.1: SMT.N.INDRANI

Counsel for Respondent No.2: G.P. for Endowments

Counsel for Respondent No.3: G.P. for Home

The Court made the following:

THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 14760 of 2004

O r d e r:

The petitioners claim to be landless poor persons and tenants of respondent No.1-Sri MSN Charities in respect of an extent of
Ac.3-28 cents of wet agricultural land in R.S. No. 205/1 and an extent of Ac.6-06 cents of wet agricultural land in R.S. No. 210, situated in Virawada village, Pithapuram Mandal, East Godavari District. The petitioners state that while they were in possession and cultivation of the lands, respondent No.1 issued individual notices dated 31-5-2003 calling upon each of them to handover the possession of the land in their possession and cultivation within 30 days, and thereafter, without issuing any notice and affording opportunity, cancelled their leases and put the lands to public auction on 11-7-2003.

Assailing the cancellation of their leases by respondent No.1, the petitioners filed writ petition in W.P. No.14237 of 2003 on various grounds, and this Court by order dated 28-8-2003, while disposing of the said writ petition *inter alia* made several directions protecting the interests of the petitioners in the land, and permitted them to make an application before respondent No.2-Assistant Commissioner of Endowments, to determine them as small farmers.

In pursuance of the said order, the petitioners state that they made application to respondent No.2 on 8-9-2003 to determine them as small farmers, followed by another application dated 16-9-2003, supported by copy of the order passed in the writ petition. It is the case of the petitioners that respondent No.2 without passing any orders on the application made by them, as directed by this Court in the writ petition, are preventing them from entering into the lands.

The petitioners state respondent No.2 also got filed a suit filed by respondent No.4, who is alleged to be the highest bidder in the auction, in O.S. No. 228 of 2003 on the file of the Junior Civil Judge, Pithapuram, seeking permanent injunction restraining the petitioners from entering into the lands, in which order of status quo was granted. The petitioners state that when respondent No.4 tried to cut the standing crop raised by them, they filed suit in O.S. No. 99 of 2003 on the file of the Senior Civil Judge, Pithapuram.

As respondent No.2 without passing any orders on the application by the petitioners to determine them as small farmers, are interfering with their possession and enjoyment of the land, they filed the present writ petition seeking direction to respondent No.2 to dispose of the application made by them for determining them as small farmers, and until the said application is disposed of, they sought direction to respondent No.2 not to interfere with their possession and enjoyment of the land.

Heard the learned counsel for the petitioners, the learned Standing Counsel for respondent No.1, the learned Government Pleader for Endowments for respondent No.2 and the learned Government Pleader for respondent No.3. None appear for respondent No.4.

The learned counsel for the petitioners submitted that respondent No.1 after issuing individual notices calling upon the petitioners to hand over vacant possession of the lands, after expiry of 30 days mentioned therein, without issuing any notices and affording opportunity to the petitioners, cancelled their leases, and though the petitioners, in pursuance of the orders dated 28-8-2003, passed by this Court in W.P. No. 14237 of 2003, made applications on 8-9-2003 and
16-9-2003, to determine them as small farmers, respondent No.2 without passing any orders thereon, contrary to the orders passed by this Court in the above writ petition, is interfering with the possession and cultivation of the petitioners. He submitted that though respondent No.2 conducted public auction on 11-7-2003, in

which respondent No.4 is said to be the highest bidder, as of today, the petitioners are in possession and enjoyment of the lands, and in fact, the petitioners have not delivered vacant possession of the lands either to respondent No.2 or respondent No.4, and in fact, both the petitioners and respondent No. 4 filed suits against each other, which are pending. He, thus submitted that respondent No.2 be directed to consider and dispose of the applications dated 8-9-2003 and 16-9-2003 made by the petitioners, and until then, direct respondent Nos.2 and 4 not to interfere with their possession and enjoyment, as directed by this Court in W.P. No. 14237 of 2003 dated 28-8-2003.

Respondent No.1 filed counter. The learned Standing Counsel appearing on behalf of respondent No.1 and the learned Government Pleader for Endowments appearing on behalf of respondent No.2 reiterating the stand taken by respondent No.1 in the counter submitted that the applications dated 8-9-2003 and 16-9-2003, said to have been made by the petitioners pursuant to the orders of this Court in W.P.

No. 14237 of 2003, dated 28-8-2003, were rejected by respondent No.2 vide orders dated 11-3-2004 passed in M.A. No. 137 of 2004 holding that the petitioners are not small farmers. They submitted that the leases of the petitioners having been cancelled, the petitioners were evicted from the lands, and respondent No.2 having conducted public auction on

11-7-2003, in which respondent No.4 was the highest bidder, vacant possession of the land was also handed over to him on the same day, and as of now, respondent No.4 is in possession of the lands, and this is evident from the stand taken by the petitioners in the contempt case filed against the respondents.

This writ petition in W.P. No. 14237 of 2003, filed by the petitioners on the earlier occasion , was disposed of by this Court by order dated 28-8-2003, *inter alia* with the following directions:

… the writ petition is disposed of permitting the petitioners to make an application before the Assistant Commissioner of Endowments having territorial jurisdiction with all relevant material to support their plea that they are landless poor persons/small farmers/marginal farmers within two weeks from today. On such application being made the Assistant Commissioner of Endowments shall make necessary enquiry after giving a reasonable opportunity to the petitioners and to the Executive Authority of the institution and pass appropriate orders in accordance with law within two weeks thereafter. Till such enquiry is completed and appropriate orders are passed by the Assistant Commissioner of Endowments determining the status of the petitioners and till 30 days time prescribed for preferring appeal under Rule 4 of the Rules is expired, the impugned notice issued in Form-I under Rule 5(1) of the Rules, shall not be given effect to and till such time, status quo obtaining as on today as to possession of the land in question shall be maintained, subject to payment of rents payable regularly. If any auction in respect of the leasehold rights of the land in question is held in the meantime, the

same shall not be confirmed till the exercise of determination of the status of the petitioners and the 30 days time prescribed for preferring appeal under Rule 4 is expired.

The petitioners having made application to respondent No.2, as directed above to determine them as small farmers, it is their specific case that respondent No.2 without passing any orders on the applications made by them is seeking to interfere with their possession and enjoyment of the land. This contention of the petitioners is bereft of any merit. The respondents to disprove this contention of the petitioners, produced copy of the order dated 4-3-2004, passed by respondent No.2 in M.A. No.137 of 2004, wherein he determined that the petitioners are not small farmers as defined under the provisions of the Endowment Act, and as such, are not entitled to any relief, as prayed for by them. Though the petitioners contended that this order was not communicated to them, the same was disputed by the respondents, and to show that the copy of the said order, passed by respondent No.2, in fact, was communicated to the petitioners, the learned Government Pleader for Endowments produced the relevant record, which shows that the said orders were communicated to the petitioners under certificate of posting. Hence, the petitioners cannot be allowed to contend that the orders passed by respondent No.2 rejecting their applications, were not communicated to them.

At this juncture, the learned counsel for the petitioners contended that the orders dated 4-3-2004 in M.A. No. 137 of 2004 were passed by respondent No.2 without affording opportunity to the petitioners. But a reading of the order passed by respondent No.2, would reveal that the petitioners along with their counsel attended the proceedings before respondent No.2, and the matter was adjourned from time to time at the instance of the petitioners, and on 3-1-2004, the counsel for the petitioners undertook to submit the case of the petitioners on 17-1-2004, and on such request, the matter, thereafter was adjourned on three occasions at the request of the petitioners, and ultimately to 4-3-2004, and even on that day when the petitioners failed to put forth their case, respondent No.2 passed the order on the basis of the material available before him. Be that as it may, the order passed by respondent No.2 determining the petitioners as small farmers, cannot be subject matter of this writ petition, which has been filed only seeking a direction to respondent No.2 to dispose of the applications made by them to determine them as

small farmers.

The learned counsel for the petitioners submitted that though respondent No.2 pursuant to the auction held on 11-7-2003 claimed to have handed over vacant possession of the land to the petitioners, as of today, the petitioners are in possession of the land. I am not inclined to go into the question as to who is in actual possession and enjoyment of the land, but having regard to the fact that the applications made by the petitioners having been disposed of by respondent No.2, nothing survives for adjudication in the writ petition.

In the result, the writ petition is dismissed as having become infructuous. No costs.

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N.V. RAMANA, J.

Date: 7th June, 2005.

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Copy to. –

1 The Executive Officer, Sri MSN Charities, rep. by its Executive

Officer, Kakinada, E.G.District.
2 The Asst. Commissioner of Endowments, Prakashnagr, Danavaipet,

Rajahmundry, E.G.Dist.
3 Station House Officer, Pithapuram P.S., E.G.District.

Two C.C. s each to the G.P. for Home and to the G.P. for Endowments, High Court

of A.P., Hyderabad (OUT)

Two C.D. Copies.